

Proposed Corrective Jury Instruction

Members of the jury: Yesterday, I misspoke when I responded to your note asking what would happen if you were unable to reach a decision. I erroneously said that – quote – “you’re allowed to compromise your beliefs if you want to reach a unanimous verdict” – end quote. (152:8-10). That was a mistake. You are to disregard that comment. You must never compromise your beliefs just for the purpose of obtaining enough votes to secure a unanimous verdict.

I also misspoke yesterday when I said that you could decide for a plaintiff on one of the two subparagraph questions and for the defendants on the other of the two subparagraph questions, in a manner that might have been interpreted to suggest that you may bargain with your fellow jurors and trade your vote as to one subparagraph question in exchange for their vote as to another subparagraph question. You must never change your mind just for the purpose of obtaining enough votes to secure a unanimous verdict. [Model Instructions for Civil Cases, 3.1 General Instructions For Use At End of Trial — Deliberations].

I also should not have discussed with you what might happen in this case after you reach a verdict. This trial is limited to the question of whether Plaintiffs proved by a preponderance of the evidence that they were Defendants’ employees under the FLSA, PMWA, and WPCL. You are not to concern yourselves with what might happen in these proceedings after you reach a verdict.

Rather, it is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so consistent with your individual judgments. Each of you must decide the case for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you must be open to their opinions. You should not be influenced to vote a certain way, however, by the single fact that a majority of the jurors, or any of them, will vote in a certain way. In other words, you should not surrender your honest convictions concerning

the effect or weight of the evidence for the mere purpose of returning a verdict, or solely because of the opinions of the other jurors.

In the course of your deliberations, you should not hesitate to reexamine your own views, and to change your opinion if you are convinced that those views are wrong. To reach a unanimous result you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to reexamine your own views. Remember that you are not partisans; you are judges — judges of the facts. Your only interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

If you should fail to agree on a verdict, the case is left open and must be resolved at a later time. There is no reason to think that another trial would be conducted in a better way or that a different jury would decide it any better. Any future jury must be selected in the same manner and from the same source as you.

We try cases to dispose of them and to reach a common conclusion if it is consistent with the conscience of each member of the jury. I suggest that, in deliberating, you each recognize that you are not infallible, that you listen to the opinions of the other jurors and that you do so carefully with a view to reaching a common conclusion, if you can. You may take all the time that you feel is necessary.

I remind you that in your deliberations you are to consider the instructions I have given you as a whole. You should not single out any part of any instruction, including this one, and ignore others. They are all equally important.

You may now retire and continue your deliberations.

[Model Instructions for Civil Cases, 3.4 General Instructions For Use At End of Trial — Deadlock].

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